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HONOURABLE SRI JUSTICE B.PRAKASH RAO
AND
HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT APPEAL NO:1227 of 2006

DATED: 11-12-2006

Between:
The Depot Manager, APSRTC Bus Depot, Medak

..... APPELLANT

AND

1. B.Nagaiah and another

.....RESPONDENTS

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JUDGMENT: (per The Hon'ble Sri Justice Ramesh Ranganathan)

Heard both sides, and at their request, the main writ appeal itself is taken up for disposal, at the stage of admission.

Aggrieved by the award of the Labour Court-II, Hyderabad, in I.D.No.56 of 1994 dated 17-11-1997, to the extent the petitioner-workman was denied back wages, he filed W.P.No.32528 of 1998. The Labour Court in its award, while ordering reinstatement, had denied back wages on the ground that the learned counsel who

appeared on behalf of the petitioner-workman had repeatedly taken adjournments and, inasmuch as the matter was dragged on because of the workman, he was not entitled for back wages. The learned Single Judge called for the records and noted that the matter had undergone about 18 adjournments on account of the appellant-corporation and that the adjournments were either at the request of the counsel for the corporation or on the ground that the presiding officer was on leave and that the observations of the Labour Court that the petitioner was not ready, except on two or three occasions, was not based on the Court record and as such the same could not be accepted. We are in complete agreement with the said conclusions of the learned Single Judge. However, the learned Single Judge, while setting aside the award of the Labour Court, held that the Labour Court was not justified in denying back wages to the petitioner and, while allowing the writ petition, had directed that the petitioner-workman was entitled for back wages. It is this portion of the order of the learned Single Judge, whereby the workman was directed to be paid back wages, that the Corporation is aggrieved by and has filed the present Writ Appeal.

Sri V.T.M.Prasad, learned Standing Counsel for the appellant-Corporation, would submit that there were several other factors which should have been examined by the Labour Court, in deciding as to whether the workman was entitled for back wages or not.

Learned counsel would place reliance on "**Allahabad Jal Samsthan v. Daya Shankar Rai**[1]**.**

Sri V.Narasimha Goud, learned counsel for the workman, on the other hand, would submit that since the Labour Court has not chosen to examine any other grounds, in denying back wages and, even in the grounds of appeal filed along with the writ appeal, no other ground which would justify denial of back wages has been raised by the appellant-Corporation, the order of the learned Single Judge, in directing payment of back wages to the petitioner-workman is justified. It is well settled that this Court, in exercise of its certiorari jurisdiction, would quash the order/award if it finds any illegality therein. It would, ordinarily, not take upon itself the task of examining whether the factors for denial of back-wages exist or direct payment of back wages on the ground that no other factor has been considered by the Labour Court/Tribunal. In **Daya Shankar Rai**[1]**,** the Supreme Court held that a law in absolute terms cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Supreme Court held that the Labour Court/Industrial Tribunal was entitled to grant the relief having regard to the facts and circumstances of each case and for the said purpose several factors were required to be taken into consideration. Among the factors enumerated, include as to whether the workman was sitting idle and had not obtained any other

employment in the interregnum. As has been held by the Supreme Court in **Daya Sankar Rai**[1], on an order of termination being set aside, while the workman is entitled for reinstatement, the question of grant of back wages stands on different footing. The Labour Court is required to consider several factors as indicated in the said judgment of the Supreme Court, before coming to a conclusion as to whether or not the workman was entitled for back wages. Payment of back wages cannot be awarded as a matter of course.

We therefore set aside the order of the learned Single Judge to the extent the learned Judge directed payment of back wages to the workman. We remand the matter back to the Labour Court to examine the limited question as to whether the workman is entitled for back wages or not. In so far as the other portion of the award relating to reinstatement and continuity of service is concerned, since the Corporation has not chosen to challenge the award before this Court, that portion of the award is declared to have attained finality. The matter is remanded for examination only to the limited extent as to whether the workman is entitled for back wages or not. The Labour Court shall hear both parties and pass its award in this regard as expeditiously as possible, in any event, not later than four months from the date of receipt of a copy of this order.

The writ appeal is allowed to the extent indicated above. No costs.

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B.PRAKASH RAO, J

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RAMESH RANGANATHAN, J

11th December, 2006

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[1] 2005 (5) SCC 124